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ABSTRACT

Reviewed are some of the legal challenges aimed against the misplacement of minority group children in low ability groups in southwestern states. Court cases covered include Ruiz vs. State Board of Education, Spangles vs. Board of Education, Diana vs. Board of Education, Arreola vs. Board of Education, Covarrubias vs. San Diego, Larry P. vs. Riles, Guadalupe Organization vs. Tempe, U.S. vs. Texas, Serna vs. Portales, and Lau vs. Nichols. The cases cited are reported to involve major issues including that determination and placement of linguistically and culturally different children was made on the basis of IQ tests which were normed on an Anglo middle class population; that tests were generally incompetently administered by public school personnel lacking the qualifications and training to interpret test results accurately; and that the consent of the parents whose children were wrongfully placed was not obtained, and when it was obtained, it was not informed, true, or valid consent. Far reaching effects (such as passage of legislation calling for educational reforms in special class placement) as well as immediate results of the law suits are considered. (SB)

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RECENT LITIGATION IN THE PLACEMENT OF MINORITY GROUP CHILDREN IN THE SOUTHWEST

Council for Exceptional Children Convention
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Over the past two decades previously powerless minority groups have resorted to the courts in an effort to achieve the rights they are claiming. I'm sure you are all aware of the various issues brought before the courts by some of these groups, beginning with the demands of civil rights groups in the 50's and continued through the 60's and 70's, by the poor, the low income citizens, welfare recipients and women's groups. More recently, the elderly have turned to the courts for solutions to their problems.

The argument that minorities deserve special judicial solicitude because of their vulnerability to abuse by the majority is not a new idea. In fact, as far back as 1938 in the case of United States vs. Carolene Products, the courts had this to say about minorities:

> "Prejudice against discrete and insular minorities may be a special condition which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities and which may call for a correspondingly more searching judicial inquiry."

This argument which has so frequently been advanced in cases involving racial discrimination assumes particular force in the context of school assessment and classification practices. For example, tracking or assignment to ability groups is not a general public decision around which a vocal minority can combine to protest. It is generally an individual judgment of intellectual ability and potential which the individual minority group members feel powerless to challenge. In the face of such seemingly immutable decisions, and the seeming inability of individuals to pose a challenge to placement practices in the schools, the courts have been seen as the "court of last resort." The assessment of exceptional children did not become an issue because psychologists, educators, or medical practitioners were dissatisfied

with the present system. Rather, it was those groups which were being labeled abnormal who began challenging the use of standardized tests. During the last decade parents have increasingly sought for their children a redress of grievances in the area of equal educational opportunity. Within recent years judicial intervention has been sought by those minority groups whose members have been seriously victimized by classification and assignment practices within the public schools. Perhaps most affected by these and other educational practices in the nation's public schools have been Blacks, Puerto Ricans and Mexican Americans.

Classification practices which have been most detrimental to these groups have been ability grouping or tracking, and assignment to special education classes for the educable mentally retarded. A number of studies report the overrepresentation of these groups in low ability classes. In a similar vein, although only a small proportion of all students are in EMR classes, Chicanos and Blacks are more likely than Anglos to be placed in these classes.

Jane Mercer in her Riverside study of the labeling of retardates found substantial disproportions in the way in which ethnic groups comprised the percentages of those labeled retarded. Mexican Americans comprised 9% of the population while 38% of those were labeled retardates. Blacks comprised 6% of the population and 11% of those labeled retarded, Anglo American constituted 85% of the population and only 51% of those labeled retarded. When the Riverside school data was compared with data from other school districts in the state of California, the same pattern of overrepresentation of Chicano and Black children in classes for the educably mentally retarded was found to be a statewide situation.

The sixth report of the U.S. Commission on Civil Rights found that in Texas, Mexican Americans were much more likely than Anglos to be placed in EMR classes, and Blacks were 3 times as likely to be placed in these classrooms. In California, Chicanos were almost 2 1/2 times more likely than Anglos to be placed in an EMR classroom while the rate increased to 4 times as high for Blacks.

The recently published report of the Children's Defense Fund entitled Misclassification of Children in School shows the picture to be very similar across the country. In other words, minority group children are more likely to be placed in an EMR classroom regardless of the geographic locale.

The use of grouping by ability is decreasing, but it is still a widespread phenomenon in the Southwest. The U.S. Commission on Civil Rights states that, of approximately 1,100 schools surveyed in five Southwestern States -- Arizona, California, Colorado, Texas and New Mexico - 63% of the elementary schools and 79% of the secondary schools practice some form of ability grouping. The practice is more prevalent in schools with a high proportion of Mexican Americans than in schools where there are few Mexican Americans.

An analysis of schools which practice some form of ability grouping shows that Chicano students were grossly overrepresented in low ability classes, and correspondingly underrepresented in high ability group classes. Thus, in schools where Chicanos were less than 25% of the enrollment, they constituted 35% of the low ability group classes, but only 8% of the high group classes. In schools with more than 50% Mexican American enrollment, 3 out of 4 students in low ability classes are Chicano, but only 2 of every 5 in high ability group classes were

Chicano. Similar patterns existed for Blacks in almost every district included in the survey.

In view of the continued prevalence of ability grouping practices and of the fact that Chicano students are assigned disproportionately to low ability groups, certain fundamental questions arise: 1) On what basis are school children assigned to ability groups and to special education classes? 2) Do the criteria for assignment provide reasonable assurance that children are being assessed accurately.

The two most commonly used criteria for making classification decisions and for assignment of students to EMR classes are teacher evaluations and standardized aptitude and intelligence tests. The most commonly recognized tests are the Stanford Binet and the Wechsler Intelligence scale. The IQ ceiling for assignment to an EMR class ranges from 70-79.

Both of these criteria are regarded as highly unsatisfactory by many authorities on testing and by numerous educators and professionals for several reasons. First of all teachers may be biased judges of a child's ability as a result of their unfamiliarity with the child's language and culture. Second, teachers are seldom trained to diagnose mental retardation. Third, Anglo-centrism is inherent in the mental tests most frequently used for diagnosing intelligence. This has been thoroughly documented by numerous psychologists and other experts on test construction. They have enumerated the various ways in which achievement and intelligence tests are culturally and linguistically biased.

It is against this background that we will now take a look at the legal challenges aimed against the misplacement of minority group children.

Because of the large Mexican American population in the Western and Southwestern part of the country, the preponderance of cases filed have been on behalf of Mexican American children. However, some notable cases have been filed by Blacks. In the Southwest, the state of California has been the scene of the largest number of legal challenges regarding tracking and placement practices for both Chicanos and Blacks.

California

Ruiz vs. State Board of Education. A case challenging the use of IQ tests for tracking purposes was that of Ruiz vs. State Board of Education. This suit was filed in Sacramento, California on behalf of three Mexican American children. At issue was the irreparable harm to the child's present educational status and future career aspirations as a result of the maintaining of records of scores received on IQ tests. The allegations made in this case were: 1) that the children named in the suit had been, or would be, administered group intelligence and achievement tests in compliance with a state law requiring sweep testing in the 6th and 12th grades; 2) the scores obtained from these tests were to be used to determine the type of teaching they would receive, and to determine tracks of specific academic level; 3) they were also to be used by counselors to direct students into prevocational or college prep courses, and to identify children for further evaluation for possible placement into classes for the mentally retarded.

The plaintiffs sought an injunction to prevent the use of an IQ score to evaluate children. They also sought to require the defendants to refrain from placing IQ scores in children's school records, and to remove those scores already recorded.

To date, no decision has been rendered in this case.

Spangler vs. Board of Education. In Pasadena, a racial imbalance in the student body at all levels was the basis for a suit filed in Federal court on behalf of Black students in the case of Spangler vs. Board of Education. The suit contended that the grouping procedures used in the district increased segregation. At every secondary school a higher percentage of white than Black students was found in the high ability classes. The suit claimed that this imbalance was due to the use of IQ and achievement scores in determining assignment classes. The defendants in the case did not contest the issue and admitted that the tests used were inaccurate and unfair. The court found in favor of the plaintiffs, and the district was ordered to discontinue grouping on the basis of IQ tests.

Diana vs. Board of Education. The most widely known, and probably most significant case to date is Diana vs. State Board of Education. This was filed in District Court of Northern California in 1970. This case, also known as the Soledad case, was the first of its kind to be filed in the Federal Courts. The suit was filed on behalf of nine Mexican American children, ages 8-13, who came from homes in which Spanish was the predominant, and in some cases, the only language spoken. All had been placed in classes for the mentally retarded after being tested on the Stanford-Binet and Wechsler Scales. After being retested in Spanish, or in a combination of English and Spanish, seven of the nine children scored higher than the cut-off score for placement (which in this case was 70). The other two scored exactly 70, and the ninth student scored three points below the cut-off score. The average gain in score was 15 points. This was in contrast to the original results obtained when the children were tested in English by a non-Spanish speaking examiner and achieved a mean of 63.5 with scores ranging from 30-72. the plaintiffs

charged that: 1) the testing procedure utilized instruments which relied heavily on verbal skills in English; 2) the content was culturally biased, having been standardized on white native Americans. Highlighted, also, was the issue of overrepresentation in EMR classes. Spanish surnamed students in that district constituted about 18 1/2% of the student population, but comprised nearly 33% of the children in the classes for the educable mentally retarded. The case was settled out of court with the following stipulated agreements:

1. All children whose primary home language was other than English, from now on, had to be tested in both the primary language and in English.

2. Children were to be tested only with tests or sections of tests that don't depend on such things as vocabulary, general information and other similar unfair verbal questions.

3. Mexican American and Chinese children already in EMR classes were to be retested and reevaluated in accordance with the first two stipulations just described.

4. Each school district was to submit a summary of the results of the reevaluations, together with a plan listing special aid to be provided each misplaced child to enable him to readjust to the regular classroom.

5. New tests were to be developed or existing tests revised so as to reflect the Mexican American culture. These were to be used only with Mexican American children so that those tested would be compared to the performance of their peers, and not the population as a whole.

6. Any school district showing a significant disparity between the percentage of Mexican American students in its regular classes and in classes for the retarded was to submit an explanation citing the reasons for this disparity.

A time period of two years was provided the defendants to comply with this order. After this time period elapsed the plaintiffs returned to the courts charging that the defendants had not complied with the stipulations. In June of 1973, another stipulation was adopted by the court stating that, although considerable progress had been made in

eliminating the excessive percentage of Mexican American children in EMR classes, continued efforts must be made to eliminate these disparities in accordance with a plan and timetable to be determined by the State Department of Education. The court will review the progress of this order in 1978.

Arreola vs. Board Education. Two other cases, similar to the Diana case, were filed in California: 1) Arreola vs. Board of Education, and 2) Covarrubias vs. San Diego Unified School District. The first case, Arreola vs. Board of Education, Santa Ana School District was filed in Superior Court of Orange County, California in 1968. This suit was filed on behalf of 11 Mexican American children, ages 5-18. This case differed from the Diana case in one significant aspect. The plaintiffs demanded that before the decision to place a child was made, the parents were to be notified and given a formal opportunity to challenge placement. The argument was made that this procedure is required by the due process clause of the 14th Amendment to the Constitution.

Although this case was filed before the Diana case, no ruling has been decided. In view of the changes occasioned by the Diana case, it appears to be moot.

Covarrubias vs. San Diego. The second case, Covarrubias vs. San Diego was initiated in Federal Court in 1970. Covarrubias also resembles the Diana case in the legal arguments presented, but three significant differences can be seen. First, twelve of the plaintiffs were black, and five were Mexican American. Second, the plaintiffs sought punitive damages in the amount of $400,000 for the period they spent in special education classes. In seeking money damages, they argued that the

defendants conspired to deprive the plaintiffs of the equal protection of the laws. Third, any revision of the current testing methods, similar to those described in Diana, must also recognize the cultural influence of the ghetto environment in determining a student's learning ability. The fourth issue brought in was that of informed consent of parents before placement of their children into EMR classes.

This case was settled out of court with certain stipulated agreements regarding reevaluation and assignment based on appropriate tests (similar to the Diana agreements). The court also established the right of parents to be provided information in their home language of the nature of the curriculum and educational goals of the EMR program in order to be able to give a valid and more informed consent regarding placement of their children. On the matter of punitive damages, the court ordered the district to pay each plaintiff of the members of the class action in the amount of one dollar.

Larry P. vs. Riles. A suit which is currently on appeal was filed in 1972 in federal court of the Northern District of California. This suit, Larry P. vs. Riles, was on behalf of six Black children. It challenged San Francisco's special education assignment policy as racially biased. The complaint charged that Black children had been inappropriatly segregated into special classes for the mentally retarded on the basis of testing procedures which; 1) failed to recognize their unfamiliarity with the white middle class cultural background and 2) which ignored their own culturally based learnings and experiences. The plaintiffs requested the court to require the defendants to:

1. to use more culturally relevent evaluation instruments;

2. to prevent the retention of Black children in EMR classes unless these children were reevaluated immediately with appropriate measures;

3. to return the plaintiffs to the regular classroom and provide for necessary supplementary training needed to catch up to their peers;

4. to correct the disparities in racial representation in classes for the mentally retarded;

5. to employ sufficient numbers of Black and other minority psychologists.

A preliminary injunction was issued by the court requiring that the use of IQ tests be discontinued as the main criteria for placement. The court ruled that Black children currently in EMR classrooms must remain there, but it ordered that yearly evaluations must take place immediately and that schools may not postpone such placement on the basis of waiting for the development of an unbiased test. Instead, the court suggested that Black children be tested by Black psychologists who would be sensitive to cultural bias and provide for evaluation of this in the test administration.

The order is currently under appeal. Also pending before the district court are motions for injunctive relief statewide, including the discontinuation of standardized IQ tests for use in placing Black students in EMR classes and relief to reduce disproportionate placement of Blacks in the classes.

Arizona

Guadalupe Organization vs. Tempe. To date the only litigation initiated in Arizona in regard to placement practices is the case of Guadalupe Organization vs. Tempe Elementary School District, filed in 1972. The issue in this case was that of disproportionate representation. This suit is significant in that it was filed on behalf of Yaqui Indian

children as well as Mexican American Chicano children. The suit charged that these children had been placed in classes for the mentally retarded on the basis of IQ tests given in English and not the child's native language. In this case, also settled out of court, the stipulations made were similar to those cited in the California cases -- that is, 1) reevaluation of children already assigned to EMR classes; 2) testing in the child's primary language; 3) placement to be made only on the basis of informed consent on the part of the parent; and 4) in the case of those children who had been misclassified, removal from their records of any notation indicating that child's assignment to an EMR class.

Bilingual Education. The preceding review has dealt with cases specific to tracking and placement of minority groups into EMR classrooms. There are three cases which are significant although they are not directly related to placement in classes for the mentally retarded. However, they do have strong implications for the placement of minority group children. This is so because they concern the special educational needs of students with a limited English speaking ability caused by living in an environment where the dominant language is not English. The principal thrust of these three cases was the affirmation of the right of non-English linguistic minorities to an education suited to their specific educational needs.

U.S. vs. Texas. In U.S. vs. Texas, the court ordered the Del Rio Independent School District to eliminate de jure segregation practices (segregation based on state, local or district policies) which were based upon separation of students of different ethnic origins. It ordered the defendants to submit a comprehensive educational plan containing sufficient education safeguards to insure that all students in

the Del Rio School District be offered equal educational opportunities. These safeguards were to include, but not necessarily be limited to, bilingual and bicultural programs, faculty recruitment and training, and curriculum design and content.

Serna vs. Portales. In New Mexico, the case of Serna vs. Portales Municipal Schools involved the Chicanos' rights to equal educational opportunity. The suit alleged that Spanish surnamed children who are placed in a school atmosphere which does not adequately reflect the educational needs of this minority are deprived of an equal educational opportunity. Because of this, a violation exists of their constitutional rights to equal protection. Cited in the testimony was the disparity in IQ and achievement scores between Anglos and Chicanos. This was seen as an indication that the school curriculum in that district was designed for the needs of the English-speaking student from a middle class background, but not suited to the educational needs of minority students.

The court found in favor of the plaintiffs and ordered the Portales school system to design and submit a plan to provide a bilingual-bicultural program suited to the needs of their Spanish speaking students.

Lau vs. Nichols. The most influential case in the provision of instruction for non-English speaking minorities has been the Lau vs. Nichols case. This suit was brought against officials responsible for the operation of the San Francisco Unified School District in 1973. The plaintiffs in this case were Chinese speaking children. They charged that they were being functionally excluded from any meaningful education because of their inability to speak or understand the language of instruction, which was English. They sought relief against these unequal

educational opportunities which, they alleged, violated the 14th amendment. The District Court ruled against the plaintiffs, this ruling was also upheld by the Apellate Court. The case was then brought before the U.S. Supreme Court which reversed the decision of the lower courts. In its ruling the Court relied on the Civil Rights Acts of 1964 which bans discrimination on the grounds of race, color, or national origin in any program receiving federal assistance. The Court explained such discrimination exists when students of a particular race, color or national origin are denied the opportunity to obtain the education generally obtained by other students in the system.

As a result of this decision, nine centers, known as General Assistance Centers or Lau Centers which are funded under Title IV of the Civil Rights Act have been established.

These centers are located throughout the United States. They provide technical assistance to districts requesting assistance in setting up programs which provide for the special educational needs of non-English speaking children in the schools.

Summary

While there were numerous distinct and identifiable complaints in the cases I have cited today, they can be synthesized into 4 major issues:

1. Determination and placement of linguistically and culturally different children was made on the basis of the IQ tests which were normed on an Anglo middle class population. The IQ tests measured more a child's English language competency rather than the Chicano and Black child's mental ability.

2. These tests were generally incompetently administered by public school personnel lacking the qualifications and training to interpret accurately the results obtained.

3. The consent of the parents whose children were wrongfully placed was often not obtained. When it was obtained, it was not an informed, true, or valid consent.

4. Serious psychological, educational and social damage resulted from misplacement of children into the EMR classes because of the stigma attached to their placement.

5. Children are excluded from a meaningful education through programs which are designed to fit the needs of an Anglo middle class child and which fail to take into account the special educational needs of non-English language dominant children.

The immediate results of the lawsuits have been indicated in each of the cases I have reviewed. However, far reaching effects have taken place not only in the communities where these suits were filed, but in the respective states, as well. Let's take a look at some of these changes:

1. In California alone, large numbers of children were retested and transferred out of Special Education classes.

2. The interest generated by the lawsuits has helped bring about passage of legislation calling for educational reforms in EMR placement.

3. The Office of Civil Rights of HEW has begun enforcement of the Civil Rights Acts of 1964 for the linguistically and culturally different child.

4. Serious efforts have been initiated to develop and adapt tests and other methods for assessing culturally and linguistically different children.

5. Perhaps the most significant result has been that the courts have provided an opportunity to publicize the specific problems and grievances of these groups. It has focused the attention of the media, legislators, other professionals, and the community at large on the particular issue.

6. It has publicized to other wronged voiceless groups that there is an available forum to which they, too, may have recourse, to secure that which is theirs rightfully.

While litigation is a serious step, minority parents have served notice that they will seek equal educational opportunity for their children by one means or another. Thus, educators are presented with

two choices. One choice is to allow educational decisions imposed upon them by the courts, a body, which by its own admission lacks educational expertise. The second choice is to assume the responsibility for exercising initiative and leadership in bringing about education reform which will assure each child, regardless of race or ethnic origin, the highest quality of educational available.